

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, INC., and)
BAYER HEALTHCARE LLC,)

Plaintiffs,)

v.)

BAXTER INTERNATIONAL INC., and)
BAXTER HEALTHCARE CORPORATION,)

Defendants.)

C.A. No. 05-349-GMS

Jury Trial Demanded

REDACTED VERSION DI 261

BAXTER HEALTHCARE CORPORATION,)

Counterclaimant,)

v.)

TALECRIS BIOTHERAPEUTICS, INC., and)
BAYER HEALTHCARE LLC,)

Counterdefendants.)

PLAINTIFFS' MOTION *IN LIMINE* NO. 5 TO PRECLUDE CERTAIN
EXPERT TESTIMONY OF THOMAS J. KINDT, Ph.D.

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Bayer Healthcare LLC*

Redacted Version Filed: April 30, 2007
Date: April 23, 2007

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Counterclaim Defendants*

Plaintiffs and Counterclaim Defendants Talecris Biotherapeutics, Inc. and Bayer Healthcare LLC ("Plaintiffs") hereby move *in limine*, pursuant to Federal Rule of Evidence 702, to preclude Defendants Baxter International Inc. and Baxter Healthcare Corporation ("Baxter") from calling their expert Thomas J. Kindt, Ph.D. at trial to provide (1) expert opinions on obviousness, as his analysis was based on improper hindsight; (2) expert opinions on inherency, because he admitted that solvent detergent treatment does not inherently elevate ACA; and (3) testimony on invalidity that relies on prior art that was not disclosed in exhibits TAL 246 or TAL 262. A proposed form of Order is attached hereto as Exhibit A.

For the reasons set forth in Plaintiffs' Memorandum of Law submitted contemporaneously herewith, Plaintiffs respectfully request that the Court enter an Order granting their Motion *In Limine* No. 5.

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Date: April 23, 2007

Respectfully submitted,

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/s/ Jeffrey B. Bove
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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TALECRIS BIOTHERAPEUTICS, INC., and
BAYER HEALTHCARE LLC,

Plaintiffs,

v.

BAXTER INTERNATIONAL INC., and
BAXTER HEALTHCARE CORPORATION,

Defendants.

C.A. No. 05-349-GMS

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BAXTER HEALTHCARE CORPORATION,

Counterclaimant,

v.

TALECRIS BIOTHERAPEUTICS, INC., and
BAYER HEALTHCARE LLC,

Counterdefendants.

[PROPOSED] ORDER

AND NOW, this ____ day of _____, 2007, upon consideration of
Plaintiffs' Motion *In Limine* No. 5 to Preclude Certain Expert Testimony of Thomas J.
Kindt, Ph.D., it is hereby ORDERED that said Motion is GRANTED.

U.S. District Court Judge Gregory M. Sleet

CERTIFICATE OF SERVICE

I hereby certify on this 23rd day of April, 2007 I electronically filed the foregoing **Plaintiffs' Motion *In Limine* No. 5 to Preclude Certain Expert Testimony of Thomas J. Kindt, Ph.D.** with the Clerk of Court using CM/ECF which will send notification of such filing to the following:

Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 provner@potteranderson.com	Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 smspaeth@townsend.com
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I also hereby certify that a true copy of the foregoing document was served upon the following in the manner indicated on April 23, 2007.

<u>Via Hand Delivery and E-Mail</u> Philip A. Rovner, Esquire Potter Anderson & Corroon LLP Hercules Plaza P. O. Box 951 Wilmington, DE 19899 (302) 984-6140 provner@potteranderson.com	<u>Via Federal Express and E-Mail</u> Susan Spaeth, Esquire Townsend and Townsend and Crew LLP 379 Lytton Avenue Palo Alto, CA 94301-1431 (415) 576-0200 smspaeth@townsend.com
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